

# Mechanics' lien could reduce losses

By William H. Eikenberry

If you're not being paid, consider filing a mechanic's lien.



Photo courtesy ALCC's Bill Atwoods

The Colorado mechanics' lien statute, C.R.S. § 38-22-101, provides that anyone who provides work, laborers, machinery, tools or equipment to construct, repair or improve any privately owned structure or land is entitled to a lien upon the property—as long as they fulfill certain requirements.

The time limits for filing the lien and beginning legal action must be met. Within four months after the last work or materials, provided by the claimant, typically excluding punch-lists, are provided, the claimant must file a Lien Statement with the clerk and recorder for the county where the property is located. If the lien is for labor by the day or piece and materials were not provided by the claimant, the lien must be filed within two months after project completion.

At least 10 days before filing the statement, the claimant must serve the property owner and the principal contractor with notice of intent to file a lien statement.

The Lien Statement must include the street address and a legal description. It also must include the amount due, and it must be signed and sworn to by the claimant. Intentionally overstating the amount actually due, for example, by including

attorneys' fees or late charges, can invalidate the lien. Accrued interest at the contract rate, or in the absence of an agreed rate, at the rate of 12 percent, can also be included in the lien amount. A mechanics' lien is only effective for one year, unless within 30 days after each annual anniversary of the filing, the claimant files an affidavit stating that the improvements on the property subject to the lien have not been completed.

Once a mechanics' lien is filed, the claimant has six months from the date of last work on the project to commence a legal action to foreclose the lien. The claimant must also file a Lis Pendens (public notice of a suit pending against real property) with the county clerk and recorder within the same six-month time period.

If, to avoid a cloud on title from the lien, a property owner files a corporate surety bond or other, approved written undertaking, the mechanics' lien will be released. The claimant must then bring a claim directly against the bond within the same six-month time period. The lien claimant must also still file a Lis Pendens.

In addition, a contractor, supplier or laborer who has not been paid in a timely manner can serve written notice on a "disburser," a lender or property owner (or anybody else) who has agreed to disburse proceeds as work progresses. After receiving the proper notice, the disburser must ascertain the amount due on any future disbursement date and pay that amount directly to the claimant from any undisbursed funds available. If the amount is disputed, the disburser can impound any undisbursed funds until the amount due is settled.

By law, all funds disbursed to any contractor or subcontractor on a construction project must be held in trust for payment to the subcontractors, suppliers and laborers for which the disbursement

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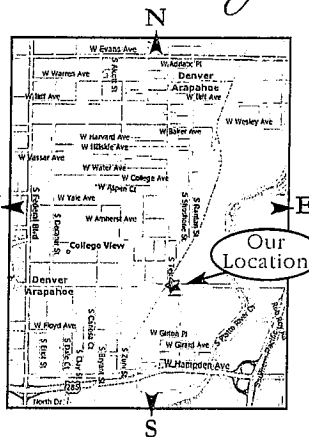
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was made. A contractor is prohibited from using trust funds to pay general corporate obligations before fully satisfying unpaid claims of subcontractors, suppliers and laborers. Disbursements considered trust funds are not limited to disbursements under a construction loan. Violations of this law constitute theft, and if legal action is commenced, damages can include triple the amount wrongfully diverted and attorneys' fees. The individuals who controlled the offending contractor's financial decisions at the time of the diversion can also be held personally liable. 

—William H. Eikenberry, is chair of the construction group at the law firm of Darling Milligan Smith & Lesch, P.C., Denver, [beikenberry@dsm-law.com](mailto:beikenberry@dsm-law.com).

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